

SAO 4/2008

BEFORE

THE HON'BLE MR JUSTICE C R SARMA

Heard Mr. D.K. Bhagawati, learned counsel for the appellant. Also heard Mr. R.L. Yadav, learned counsel for the respondent No. 2 and Mr. P.K. Talukdar, learned counsel for the respondent Nos. 1 and 3.

By this appeal filed under Order XLIII Rule 1 (U) of the CPC, the appellant who is the defendant in Title Suit No. 46/2006 (T.S. No. 9/95 old) have challenged the judgment and order dated 31.07.2008, passed by the learned Civil Judge, Lakhimpur, North Lakhimpur, in Title Appeal No. 3/2008, whereby the learned Civil Judge remanded the suit to the trial Court for fresh disposal.

The plaintiff/ respondent filed the said suit for declaration of right, title and recovery of khass possession in respect of the suit land. The plaintiff suit was contested by the defendant/ appellant by filing written statement. The Munsif No. 1, North Lakhimpur, dismissed the plaintiff's suit by judgment and decree dated 19.11.07.

Aggrieved by the said judgment and decree of dismissal, the plaintiff as appellant preferred the appeal aforesaid.

The learned Civil Judge, Lakhimpur, North Lakhimpur by the impugned judgment and decree dated 31.07.2008, remanded the suit to the trial Court for fresh disposal after framing 2 (two) additional issues.

Aggrieved by the said judgment and order of remand the defendant/ respondent have come up with this appeal, on the ground that the appellate Court committed error by remanding the appeal, instead of disposing the appeal himself.

Having heard the learned counsel appearing for both the parties, I find that the trial Court framed 2 (two) additional issues and remanded the suit for fresh disposal. The learned trial Court instead of remanding the matter ought to have disposed of the appeal by giving decisions in respect of the issues as per law.

The learned counsel appearing for both the parties have submitted that they have no objection if the matter is remanded to the Appellate Court for disposal after passing necessary judgment on the basis of the materials available on record. In view of above, considering entire aspect of the matter, I find it to be a fit case to remand to the Appellate Court, to dispose of the appeal after deciding all the issues, by giving opportunities to both the parties.

Accordingly, the impugned judgment and decree dated 31.07.2008 is set aside and the appeal is remanded.

With the above this SAO is disposed of.

Parties shall appear before the appellate Court on 12.03.2014.

Return the LCR immediately.